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12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION

15 NETWORK APPLIANCE, INC.,
16
17 Plaintiff - Counterclaim
Defendant,
18 v.
19 SUN MICROSYSTEMS, INC.,
20 Defendant -
21 Counterclaimant.

CASE NO. 3:07-CV-06053 EDL

**SUN MICROSYSTEMS, INC.'S *EX PARTE*
APPLICATION TO SHORTEN TIME FOR
HEARING ON SUN'S RENEWED
MOTION FOR PARTIAL STAY OF THE
CASE PENDING REEXAMINATION OF
UNITED STATES PATENT NO. 6,892,211**

**Date: TBD
Time: TBD
Courtroom: E, 15th Floor
Hon. Elizabeth D. Laporte**

22
23 **I. INTRODUCTION**

24 Pursuant to Northern District of California Local Rules 6-1(b), 6-3 and 7-10, Sun
25 Microsystems, Inc. ("Sun") requests that the Court shorten time to hear Sun's Renewed Motion
26 For Partial Stay Of The Case Pending Reexamination Of United States Patent No. 6,892,211
27 ("Motion to Stay").
28

1 The issue here is simple. The United States Patent and Trademark Office ("PTO")
 2 recently issued an office action rejecting all claims of NetApp's United States Patent No.
 3 6,892,211 ("the '211 patent"). In an effort to streamline the case and considerably reduce the
 4 amount of time, resources and money that otherwise would need to be spent by the Court and the
 5 parties, Sun requests a partial stay of the case pending reexamination of the '211 patent and
 6 further requests that this motion be heard on an expedited basis.

7 If Sun's motion for an expedited briefing schedule is granted, the Court may avoid
 8 continuing to address the constructions of three terms in the '211 patent, stemming from the
 9 August 27, 2008 *Markman* hearing. Additionally, the parties may avoid unnecessary discovery if
 10 Sun's motion to stay is heard on an expedited basis. In other words, both the parties and the
 11 Court will benefit from determining as early as possible whether the case is stayed with respect to
 12 NetApp's '211 patent. Sun's request for an expedited briefing schedule is requested for the sole
 13 purpose of streamlining the Court's claim construction process and the parties' discovery efforts.

14 **II. MEET AND CONFER EFFORTS**

15 On September 4, 2008, Sun informed NetApp that it would seek a stay of the case with
 16 respect to the '211 patent. (Declaration of Christine Corbett In Supp. of *Ex Parte* Motion
 17 ("Corbett Decl."), ¶ 2.) During this conversation, Sun asked whether NetApp would stipulate to
 18 having Sun's Motion to Stay heard on an expedited basis. (*Id.*) On September 8, 2008, NetApp
 19 indicated that it would object to Sun's request to have Sun's Motion to Stay heard on an
 20 expedited basis. (Corbett Decl., ¶ 3.)

21 **III. LEGAL ARGUMENT**

22 Pursuant to Northern District of California Local Rule 6-3 and the Court's inherent power
 23 to manage cases in the interests of justice, Sun respectfully requests that the Court grant its
 24 motion to shorten time on its Motion to Stay. As set forth in the accompanying Notice of Motion
 25 and Memorandum of Points and Authorities in support of Sun's Motion to Stay, Sun is seeking an
 26 order from the Court staying this case with respect to the '211 patent pending completion of the
 27 PTO's reexamination of the patent.

28 There can be no dispute that if Sun's Motion to Stay is set as a regularly noticed motion

(with a hearing date of October 14, 2008), the Court will be forced to incur additional time and resources construing terms of the '211 patent that may no longer be part of this case. Moreover, the parties will be able to avoid unnecessary discovery if the '211 patent is stayed.

IV. PROPOSED BRIEFING AND HEARING SCHEDULE

Sun proposes the following briefing schedule with respect to its Motion to Stay. Sun's Motion to Stay is deemed filed as of September 8, 2008. NetApp shall file its opposition, if any, by 5:00 p.m. on September 17, 2008. Sun shall file its reply by 5:00 p.m. on September 24, 2008. Sun also respectfully requests that the Court hear its Motion to Stay on September 30, 2008 at 9:00 a.m. This schedule provides both NetApp and the Court with sufficient time to evaluate, respond and consider the papers on file.

V. CONCLUSION

Based on the foregoing, Sun respectfully requests that the Court issue an Order expediting briefing and hearing on Sun's Motion to Stay.

Dated: September 8, 2008.

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By 

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